IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.838 OF 2006

United White Metal Ltd. ..Petitioners

Vs.

Bhartiya Kamgar Sena and Ors. ..Respondents

Mr.K.K.Singhvi a/w Mr.Avinash Jalisatgi for the petitioners

Mr.Shailesh More a/w Ms.Bina Dholakia for the respondents

CORAM : S.U.KAMDAR, J
DATED : 3RD APRIL, 2006

ORAL JUDGMENT:

1. The present petition is challenging the order dt.8.12.05 passed by the Industrial Tribunal in Reference (IT) No.46 of 204. Some of the material facts of the present case are briefly enumerated as under:

2. The petitioners is a company engaged in the manufacturing of steel wire ropes. On 29.12.03, the petitioners purchased the factory undertaking

of M/s. OTIS Elevators, comprising of 235 workers, on 'as is where is basis'. It is the case of the petitioners that though they purchased the factory with workers liability but due to competitiveness, globalisation and advanced technology, the petitioners could not do so and accordingly made an application under section 25-N of the Industrial Dispute Act, 1947 seeking permission of the Authority of the state government to retrench 116 workmen. On 17.9.04, the Specified Authority (i.e. the Additional Commissioner of Labour, Mumbai) passed an order granting the permission to retrench 116 workers and subsequently the petitioners retrenched the said workers by complying all the legal provisions as required for retrenchment. On 22.9.04 and 23.9.04, Respondent and and Bhartiya Kamgar Karmachari Mahasangh made an application for review of the said order dt.17.9.04 before the Specified Authority. On 11.10.04 the Specified Authority passed an order refusing to review the earlier order but referred it to the Industrial Tribunal for adjudication. On 20.10.04 the appropriate Government sent the matter to the Industrial Tribunal by way of a reference under

s.25-N of the Act. On 2.12.04, the petitioners filed an application for interim relief. On 11.3.05, the petitioners filed their statement of claim before Industrial Tribunal. On 24.10.05, the petitioners made an application to the Industrial Tribunal contending that the Industrial Tribunal had no Jurisdiction to continue with the reference after the expiry of the period of one year from the date of order granting the permission u.s.25N i.e.17.9.04. It is further submitted before the Authority that under provision of section 25N (5), the order of appropriate Government granting permission to retrench the employee stands lapsed on expiry of period of one year and therefore there cannot be any adjudication of the said order in reference by Industrial Tribunal. On 8.12.05 the Industrial Tribunal passed an order rejecting the contention of the petitioners and holding that reference is valid and will continue to remain valid even after expiry of period of one year from the date of which permission for retrenchment was granted. It is this order of Industrial Tribunal which is challenged before me.

3. The learned counsel for the petitioners has contended that the view of the Industrial Tribunal is totally perverse and contrary to the express provision of Act. He has drawn my attention to provision of section 25-N and 25-O of the Industrial Disputes Act, 1947. He has contended that provisions of section 25-O which are in paramateria to the provisions of section 25-N had come up for consideration before Supreme Court in the case of Vazir Glass Works Ltd V. State of Maharasthra reported in 1996(72) FLR 335 and the Supreme Court while interpreting the provisions of section 25-O subsection 4 and 5 of the Industrial Disputes Act, 47 has taken a view that once the period of one year expired the said order ceased to operate and therefore the Industrial Tribunal cannot have the Jurisdiction to entertain and try the reference about validity of the said order.

4. The learned counsel for the petitioners has further contended that in the light of the aforesaid and in view of the fact that provisions of section 25-N subsection 5 and 6 thereof being paramateria identical to the provision of section

25-O subsection 4 and 5, the Judgment of Apex court applies in full force in the present case. The relevant portion of provisions of section 25-N subsection 5 and 6 and 25-O sub section 4 and 5 are reproduced as under:

> "25-N
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> (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
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> (6) The appropriate Government or the specified authority may, either on it own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.
>
> 25-O
>
> (4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of subsection (5) be final and binding on all the parties and shall remain in force for one year from the date of such order.
>
> (5) The appropriate Government may, either on its own motion or on application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (2) or refer the matter to a Tribunal for adjudication.
>
> Provided that where a reference has been

> made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference."

5. The learned counsel for the respondents has on the other hand contended that the argument advanced by the petitioner is erroneous. He has contended that the time limit of one year prescribed under sub section 5 and 6 of section 25-N is merely directory and not mandatory and therefore even on expiry of period of one year the Industrial Tribunal will continue to have Jurisdiction to entertain and try the reference.

6. The learned counsel for the respondents has relied upon the Judgment of Division Bench by this Court in the case of Association of Engineering Workers v. Indian Hume Pipe Co.Ltd and ors reported in 1986 LAB I.C. 749 particularly para 7 thereof which reads as under:

> "7. It is true that when consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. However,

where a statute imposes a public duty and lays down the manner in which and the time within which the duty shall be performed, injustice or inconvenience resulting from a rigid adherence to the statutory prescriptions may be a relevant factor in holding such prescription only directory. This aspect of the matter is summarised by Shri G.P.Singh in his book at page 286 in the following terms:

"In considering whether a statute is imperative, Denman, J. quoted: 'a balance may be struck between the inconvenience of sometimes rigidly adhering to, and the convenience of sometimes departing from its terms. It was held in that case that where a public officer is directed by a statute to perform a duty within a specified time the cases establish tat provisions as to time are only directory. Similarly, it has been held while construing s.17(1) of the Industrial Disputes Act, 1947, that it is obligatory on the Government to publish an award, but the provision, that it should be published within thirty days, is not mandatory and an award published beyond thirty days is not valid. A provision fixing a time, within which a public officer or authority has to act in performance of a duty, generally means that the statute considers it reasonable for the offer or authority to act within the said period. The expiry of the period without more confers no right unless the statute by a legal fiction or otherwise confers a right. Thus, a provision in a Municipal Act that an application for layout should be disposed of within a particular time should be disposed of within a particular time does not mean that the application must be deemed to have been granted after expiry of the said period unless there is a provision to that effect made in the Act.

When the provisions of a statute relate to the performance of a public duty and the

> case is such that to hold null and void acts in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those who are entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only."
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> The provisions of S.25N(6) will have to be construed in the background of these well established principles.

7. The learned trial Judge has in his impugned order noted the provisions of subsection 5 and 6 of section 25-N as well as the provisions of section 25-O of the said act. He has also relied upon the the Judgment of Apex Court in the case of Vazir Glass Works Ltd. v.Maharashtra General Kamgar Union and another reported in 1996 (72) FLR pg.335. However, in para 12 of the impugned order, the finding is given that though provisions of 25-N and 25-O are paramateria the same but merely because time limit is expired it should not become the ground so as to lapse the proceeding and the precautions should be taken for the Government machinery to move fast. It has been further held while interpreting the words ’referring the matter’ to the Tribunal for adjudication, so as to mean

that the matter has to be adjudicated upon by the Tribunal irrespective of time and further finding is given that the provision talks about review and not about reference.

8. In my opinion, the Judgment of the Apex Court in the case of Vazir Glass Works Ltd. (Supra) clearly holds that once a period of one year expired the order itself lapses and thus, Jurisdiction of the Tribunal to adjudicate the disputes does not survive any further. The apex court while considering the aforesaid contention has held as under:

> "Although it has not been expressly indicated within what period a review application validity made is to be disposed of, but the provision that order on an application for closure would remain in force for one year and in the absence of any embargo to make fresh application for such permission after expiry of one year even if a review application remains pending, makes it abundantly clear that in the scheme of Section 25(O), the review application is to be made before expiry of the said time frame of one year and such application is to be made before expiry of the said time frame of one year and such application is to be disposed of within such time frame otherwise review application will become infructuous. The

> argument that a party should not be made to suffer simply on account of failure on the part of a statutory authority to dispose of review application within a time frame and thereby rendering it a infructuous, is not tenable because after expiry of the said time frame of one year, the party aggrieved has a right to make a fresh application by incorporating all the material factors germane for consideration of its application for permission to close, including the factors indicated in view application. Neither the general principle of retaining jurisdiction to disposed of review application validly made nor the principle that an authority it clothed with the power of review will not become functus office after expiry of the time frame of one year but it will retain its authority to dispose of the pending review application will arise in the context of the scheme of Section 25(O).
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> It also appears to us that the reference to the industrial tribunal for adjudication of the application for permission to close an industrial unit is made under Section 25(O)(5) of the Act and such reference is not under Section 10(1) of the act. Hence, although it was mentioned in the order of the State Government that the reference to Industrial Tribunal for adjudication of the application for permission for closure was made under Section 25(O)(5) read with section 10(1) of the Act, such reference has in law been made under Section 25(O)(5) of the Act without the aid of Section 10(1) of the Act.

9. The view taken by the apex court is that once the period of one year has expired and even if review application is pending then the said review

application does not survive. While considering the review application the apex court has also considered the case where there is a reference to the Industrial Tribunal for adjudication that once there is a reference u.s.25(O)(5) and not u/s 10(1) then in that event the reference must fail on expiry of period of one year and cannot be proceeded with. In the present case also reference is under s.25-N and not under s.10(1) and thus the reference must fail on the expiry of period of one year.

10. In the light of the Judgment of Vazir Glass Works Ltd. (Supra), the view taken by the Division Bench in the case of Association of Engineering Workers (Supra) cannot be treated as correct law. In my opinion the Division Bench Judgment stands impliedly overruled by the judgment of the apex court because the apex court has held that period of time limit prescribed under the act is mandatory and on expiry of period of time State Government would cease to have Jurisdiction because the order which is sought to be adjudicated upon in reference does not survive any more. If that is the view

then it cannot be stated that the time limit prescribed is directory and not mandatory. In my opinion, in the light of the Judgment of the Apex Court the view expressed by the Division Bench in the case of Association of Engineering Workers is no longer a good law and thus stands impliedly overruled.

11. In the light of the aforesaid, I am of the opinion the interpretation of the provisions of section 25-N of the Industrial Disputes Act, 1947 which is identical and in paramateria with the provisions of s.25-O subsection 5 and 6 must take its colour from the interpretation laid down by the Supreme court in the case of Vazir Glass Works (Supra) and thus, even in case of retrenchment time limit prescribed thereof ought to be held mandatory and on expiry of such time limit the Industrial Tribunal ceased to have Jurisdiction any further to adjudicate the dispute referred under 25-N of the Industrial Dispute Act 1947.

12. In that light of the matter, the impugned order is unsustainable in law and the same is

required to be quashed and set aside and the application preferred by the petitioner is required to be granted. I also held that the Tribunal has no Jurisdiction to entertain and determine the reference under section 25-N of the Industrial Disputes Act, 1947 after the lapse of one year period from the date of the said order. Petition is accordingly made absolute. However, there shall be no order as to costs.